***THE HONBLE Ms. JUSTICE G.ROHINI**

–

+ WRIT PETITION No. 9767 OF 1999

%Dated 09-06-2005

1. M.Nahid Parveen, W/o. Late Ismail, Ward No.25/183,

Door No.LIG II 96, HB Colony, A.K.Nagar, Nellore-4 and 4 others.

PETITIONERS

VERSUS

$ 1. The Chairman, A.P. State Bar Council, High Court Campus,

Hyderabad and two others.

RESPONDENTS

! Counsel for Petitioner: Mr. S.KHADER MOHIDDIN

^Counsel for Respondent No.1: MR. B.NARASIMHA SARMA /

MR. NANDA KISHORE

Counsel for Respondent No.3: SMT. T.H.S. SOWBHAGYA LAKSHMI

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1984 Supreme Court 346

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9767 of 1999

Between:

1 M.Nahid Parveen w/o late Ismail
ward No.25/183, Door No. LIG ii 96, HB Colony A.K.Nagar, Nellore-4
2 Mahajabeen d/o M.Ismail
Nallakunta, Hyderabad
3 M.D.Parvaz Zama son of I.Smail
ward No.25/183, Door No. LIG ii 96, HB Colony A.K.Nagar, Nellore-4
4 M.D. Jamsheedzama, son of M.Ismail
ward No.25/183, Door No. LIG ii 96, HB Colony A.K.Nagar, Nellore-4
5 Md. Shareen Begum d/o M.Ismail
Subbareddy buildings, Harinathpuuram Nellore-3

..... PETITIONERS

AND

1 The Chairman,
A.P.State Bar Council High Court Campus, Hyderabad
2 The Chairman
Bar Association of India, 93, Lawyers chambers New Delhi
3 Safia Begum W/o late Ismail
Physically Handicaped Hostel Matron, Podalakur Road
A.K.Nagar, Nellore-4

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ , order or direction more particularly one in the nature of the writ of Mandamus directing the 1st respondent not to release Advocate-Welfare fund lying on my (Petitioners father) fathers name M.Ismail bearing enrolment No.AP 221/81 overlooking the rightful share of the petitioners to the alleged nominee along ie. the 3rd respondent till the she gets succession certificated through proper court of law.

Counsel for the Petitioners : MR. S.KHADER MOHIDDIN

Counsel for the Respondent No.3 : SMT. T.H.SOWBHAGYA LAKSHMI

Counsel for the Respondent No.1: Mr. B.Narasimha Sarma /

Mr. Nanda Kishore

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.9767 OF 1999

-

ORDER :

The writ petitioners claim to be the wife and children of late Md. Ismail, who was practicing as an Advocate at Nellore. It is stated that he practiced during the years 1986 to 1999 and died on 2-2-1999. During his life-time, he was admitted as a Member of the A.P. Advocates Welfare Fund, having paid the requisite membership fee in the year 1996. He nominated the third respondent herein who is his wife and his son by name Sri Md.Shanwaz to receive the benefits under the said Fund. After his death, the said two nominees made an application o n 5-3-1999 to the first respondent requesting to release the benefits.

The writ petitioners herein do not dispute the fact that the third respondent is the wife of late Sri Md. Ismail. However, it is claimed that the first petitioner is the second wife of late Md. Ismail and the petitioners 2 to 5 are his children born through the first petitioner and thus being the legal heirs they are also entitled to a share out of the benefits under the A.P. Advocate Welfare Fund. It is alleged that the third respondent refused to give share to the writ petitioners on the ground that she and her son alone are the nominees. In the circumstances, the writ petitioners got issued a legal notice dated 10-4-1999 to the respondents 1 and 2 informing them that they are also entitled to a share in the benefits under the Fund though they were not nominated by late Ismail and requesting them to distribute the said amount among all the legal heirs and not to disburse the amount to the nominees alone. However, the respondents 1 and 2 failed to respond. The petitioners came to know that the first respondent has released a sum of Rs.5,000/- in favour of the third respondent and her son and the balance is likely to be released very soon. Hence, this writ petition seeking a Writ of Mandamus restraining the first respondent from releasing the

amount payable to late Sri Md. Ismail under Advocate Welfare Fund to the third respondent alone without considering the claim of the writ petitioners.

On behalf of the 1st respondent, the Secretary of A.P. State Bar Council filed a counter-affidavit stating that the third respondent and her son Md. Shanwaz, being the wife and son are the nominees of late Sri Mohd. Ismail. The said nominees made an application requesting for release of the benefits and the same was received in the office of the first respondent on 6-3-1999. Subsequently, a telegram was received on 6-4-1999 from the third petitioner herein stating that late Md. Ismail had two wives and six children and therefore requesting not to release the welfare fund account only in favour of the nominees. In view of the controversy, the application along with telegram and legal notice dated 3-4-1999 got issued by the writ petitioners was placed before the Welfare Fund Committee. The Committee having considered the same in its meeting held on 24-4-1999, resolved to give an amount of Rs.35,000/- towards death benefit equally to the two nominees namely Smt. Md.Safia Begum (3rd respondent) and her son Md. Shanwaz, since as per Section 16(2) of A.P. Advocates Welfare Fund Act, nominee / nominees alone is/are entitled to the death benefit amount. Hence, the claim of the writ petitioners is untenable and the writ petition is liable to be dismissed.

On behalf of the third respondent, a separate counter-affidavit has been filed stating that she is the only legally wedded wife of Sri Md. Ismail and that herself and her son Md. Shanwaz are the only legal heirs of late Md. Ismail. The plea of the writ petitioners that the first petitioner is the second wife and the petitioners 2 to 5 are the children of late Ismail has been categorically denied and it is stated that the writ petition is filed with all false claims taking advantage of the personal law of Muslim religion. Since late Ismail had clearly mentioned the names of the third respondent and her son as nominees, they alone are entitled to receive the said amount. The Writ Petition is misconceived and liable to be dismissed.

I have heard the learned Counsel for both the parties and perused the material on record.

As per Section 16(2) of the A.P. Advocates Welfare Fund Act, 1987, in the event of death of a Member, the consolidated amount as determined by the Welfare Fund Committee, in the manner prescribed, shall be paid to the nominee or where there is no nominee to his dependants. In the case on hand, the application form made by late Md. Ismail in Form No.IV prescribed under Rule-19 of the Rules made under A.P. Advocates Welfare Fund Act, 1987 shows that the third respondent and her son Md. Shanwaz were specified as nominees stating that they are entitled for half share each. In the circumstances, undoubtedly the third respondent and her son being the nominees are entitled to receive the amount in question. However, the learned Counsel for the petitioners while placing reliance upon a decision of the Supreme Court in SARBATI DEVI v. USHA DEVI contended that the amount payable to the nominee or nominees does not mean that it shall belong to the nominees alone to the exclusion of other heirs of the deceased. Relying upon the ratio laid down in the said decision, it is contended that notwithstanding the fact that the third respondent and her son were shown as nominees in the application form by late Ismail, the writ petitioners being the legal heirs are also entitled to a share in the amount in question.

It is true that in *Sarbati Devi's case (1 supra)* the Supreme Court having examined the scope and object of Section 39 of the Insurance Act, 1938 held that a mere nomination made under Section 39 of the Act does not have the affect of conferring on the nominee any beneficial interest in the amount payable under the Life Insurance Policy on the death of the assured. However, the Supreme Court made it clear that the nomination indicates the hand which is authorised to receive the amount on the payment of which the insurer gets a valid discharge of its liability under the policy and that the amount can be claimed by the heirs of the assured in accordance with the law of succession governing them.

In the case on hand, since admittedly the deceased has nominated the third respondent and her son to receive the beneficial amount from the 1st respondent, there cannot be any Writ of Mandamus restraining the first respondent from releasing the amounts in favour of the third respondent and her son. As held by the Supreme

Court, the third respondent and her son being the nominees are authorised to receive the amount and on such payment the first respondent gets a valid discharge of its liability under the scheme. However, that does not mean that there is any adjudication of the claim made by the petitioners for a share in the benefits in question. It is always open to the petitioners to make such a claim in accordance with the law of succession governing them in the appropriate forum.

In the circumstances, the Writ Petition is devoid of any merit and the same is accordingly dismissed. It is made clear that this Court has not expressed any opinion as to the claim of the writ petitioners that they are the legal heirs of late Md. Ismail or with regard to their entitlement for a share in the benefits payable under the A.P. Advocates Welfare Fund Act, 1987 and the dismissal of this writ petition shall not preclude the petitioners to work out the appropriate remedy as available under law for redressal of their grievance.

Needless to mention that the interim order granted earlier shall stand vacated. No costs.

_____

9th June, 2005.

Gbs

To

1 The Chairman,
A.P.State Bar Council High Court Campus, Hyderabad
2 The Chairman
Bar Association of India, 93, Lawyers chambers New Delhi
3. **Two CD copies**